

March 6, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, GN Docket Nos. 12-268, 16-306

Dear Ms. Dortch:

On March 2, 2017, broadcast representatives from around the country met with members of the Incentive Auction Task Force. A complete list of meeting attendees is attached. During this meeting, broadcasters discussed challenges surrounding the repack of television stations following the close of the broadcast spectrum incentive auction.

The broadcasters present explained their concern that the Commission's current 39-month deadline for repacking could be unachievable in practice, putting viewers at risk of losing service. Due to the number of stations that must move, resource constraints and the potential for weather-related delays, broadcasters have no reason to believe that the Commission's 39-month deadline will be achievable for all stations.

In the event this deadline does not prove achievable, broadcasters are left with no good options. While staff suggested they would be willing to re-evaluate the deadline if it proves necessary, that remains cold comfort for repacked television stations and their viewers. Under the Commission's existing rule, which remains the subject of a pending petition for reconsideration, broadcasters are required to cease operation on their pre-auction channels at the end of 39 months, without exception. Operation on temporary facilities would lead to reduced coverage and viewers losing service.

The broadcasters also discussed the potential impacts on stations that are not repacked, including FM radio stations, which happen to be located on or near towers with repacked television stations. These stations and their listeners are threatened with potential service disruptions despite the fact that they have literally nothing to do with the auction. Ongoing rigid adherence to an unreasonable deadline will only exacerbate this challenge.

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Staff acknowledged that the 39-month deadline the Commission adopted was not statutorily-required. Staff stated that the Commission's creation of its 39-month deadline was in part based on a desire to align the duration of the post-auction transition with the constraint the Spectrum Act imposed on the Commission to make reimbursements to repacked broadcasters within three years of the close of the auction.¹ However, the Commission has already severed the link between the statutory reimbursement window and the duration of the transition by providing that stations may submit estimated expenses for work that has not yet been completed prior to receiving final allocations, and that stations must complete final expense documentation to the Commission even if work is not completed until after the reimbursement window.²

Broadcasters share the desire for the post-auction transition to proceed as efficiently as possible. But the Commission should not cut corners during the repack at the expense of viewers and listeners. We urge the Commission to adopt a flexible, balanced approach to repacking that is fair to all stakeholders, while avoiding disruption to existing services.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick McFadden", with a stylized flourish at the end.

Patrick McFadden
Associate General Counsel,
National Association of Broadcasters

cc: Meeting Attendees

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, § 6403(b)(4)(D) (Feb. 22, 2012) (codified at 47 U.S.C. § 1452(b)(4)(D)) ("The Commission shall make all reimbursements required by subparagraph (A) not later than the date that is 3 years after the completion of the forward auction under subsection (c)(1).")

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶¶ 616-617.

Meeting Attendees

Commission Staff

Gary Epstein
Jean Kiddoo
Hillary DeNigro
Charles Meisch
Erin Griffith
Rachel Kazan

Broadcast Representatives

David Donovan, New York State Broadcasters Association
Robert Krummenacker, WBNG-TV
Steve Rabb, Tribune Broadcasting
Kathleen Choal, KSBY-TV
Anita Helt, KNXV-TV
Joe Pomilla, WSOC-TV
Jack Dempsey, WCYB-TV
Monte Loos, KOTA-TV
Bob Singer, KTVZ-TV, KFXO-TV
Marti Hazel, WDRB-TV
Karen Mucci, Kentucky Broadcasters Association
Henry Lackey, Kentucky Broadcasters Association
Brian McDonough, Gray Broadcasting
Ramon Pineda, Univision
Joe Conti, Pennsylvania Association of Broadcasters
Ben Downs, Bryan Broadcasting
Dave Arland, Indiana Broadcasters Association
Richard Dautre Jones, KTVX, KUCW
Erin Dozier, National Association of Broadcasters
Emmy Parsons, National Association of Broadcasters
Patrick McFadden, National Association of Broadcasters